

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

EVAN R. APPLEGATE,

Plaintiff,

v.

CIV 14-0093 JAP/KBM

CAROLYN W. COLVIN,  
Acting Commissioner of  
Social Security Department,

Defendant.

**PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER came before the Court on Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1). *Doc. 12.* District Judge Parker has referred this matter to me for a recommended ultimate disposition. *Doc. 16.* The Court has reviewed the motion and Plaintiff's response. No reply has been filed, and the time for doing so has expired.

The Court is persuaded that Plaintiff has overcome the presumption that the Appeals Council final order was received by December 2, 2013. As made clear by the submissions of Plaintiff, he and his attorneys did not actually receive the final order of the Appeals Council until December 5, 2013. Sixty days from the date of receipt fell on February 3, 2014, and because this suit was filed one day before that deadline on February 2,

2014, the Complaint was timely filed, and the motion to dismiss is without merit.

Wherefore,

**IT IS HEREBY RECOMMENDED** that Defendant's Motion to Dismiss (Doc. 12) be denied.

**THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**



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UNITED STATES CHIEF MAGISTRATE JUDGE